

103D CONGRESS
1ST SESSION

S. 966

To reduce metals in packaging, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 13 (legislative day, APRIL 19), 1993

Mr. LAUTENBERG (for himself and Mr. CHAFEE) introduced the following bill;
which was read twice and referred to the Committee on Environment and
Public Works

A BILL

To reduce metals in packaging, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reduction of Metals
5 in Packaging Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the management of solid waste can pose a
9 wide range of hazards to public health and safety
10 and to the environment;

1 (2) packaging comprises a significant percent-
2 age of the overall solid waste stream;

3 (3) the presence of heavy metals in packaging
4 is a concern in light of the likely presence of heavy
5 metals in emissions or ash when packaging is incin-
6 erated, or in leachate when packaging is landfilled;

7 (4) lead, mercury, cadmium, and hexavalent
8 chromium, on the basis of available scientific and
9 medical evidence, are of particular concern;

10 (5) it is desirable as a first step in reducing the
11 toxicity of packaging waste to eliminate the addition
12 of these heavy metals to packaging; and

13 (6) the intent of this Act is to achieve this re-
14 duction in toxicity without impeding or discouraging
15 the expanded use of postconsumer materials in the
16 production of packaging and components of packag-
17 ing.

18 **SEC. 3. DEFINITIONS.**

19 As used in this Act:

20 (1) ADMINISTRATOR.—The term “Adminis-
21 trator” means the Administrator of the Environ-
22 mental Protection Agency.

23 (2) DISTRIBUTOR.—The term “distributor”
24 means any person who purchases goods from a man-
25 ufacturer for sale or promotional use.

1 (3) INCIDENTAL PRESENCE.—The term “inci-
2 dental presence” means the presence of lead, cad-
3 mium, mercury, or hexavalent chromium in a pack-
4 age or packaging component if the substance was
5 not intentionally introduced into the package or
6 packaging component for its own properties or char-
7 acteristics.

8 (4) INTENTIONAL INTRODUCTION.—

9 (A) IN GENERAL.—The term “intentional
10 introduction” means the purposeful introduc-
11 tion of lead, cadmium, mercury, or hexavalent
12 chromium into a package or packaging compo-
13 nent with an intent that one or more of the
14 substances be present in the package or packag-
15 ing component.

16 (B) EXCLUSION.—The term does not in-
17 clude—

18 (i) the background levels of the sub-
19 stances that naturally occur in raw mate-
20 rials or are present as postconsumer addi-
21 tions, and that are not purposefully added
22 to perform as part of a package or packag-
23 ing component; and

24 (ii) any trace quantities of a process-
25 ing aid or similar material used to produce

1 a product from which a package or pack-
2 aging component is manufactured, if the
3 processing aid or similar material is rea-
4 sonably expected to be consumed or trans-
5 formed into a nonregulated material dur-
6 ing the process.

7 (5) MANUFACTURER.—The term “manufac-
8 turer” means any person in the chain of production
9 who makes a package or packaging component for
10 sale or promotional purposes, including an importer
11 of packages or packaging components.

12 (6) PACKAGE OR PACKAGING.—The term
13 “package” or “packaging” means a container that
14 provides a means of marketing, protecting, or han-
15 dling a product. The term includes a unit package,
16 an intermediate, and a chipping container as defined
17 in standard D-996 issued by the American Society
18 of Testing and Materials, and unsealed receptacles
19 such as carrying cases, crates, cups, pails, rigid foil,
20 and other trays, wrappers and wrapping films, bags,
21 and tubs.

22 (7) PACKAGING COMPONENT.—The term “pack-
23 aging component” means any individual assembled
24 part of packaging, including any interior or exterior
25 blocking, bracing, cushioning, weatherproofing, exte-

1 rior strapping, coating, closure, ink, label, adhesive,
2 and stabilizer, except that the term does not include
3 steel strapping. For the purposes of this section, tin-
4 plated steel that meets the specification under stand-
5 ard A-623 issued by the American Society of Test-
6 ing and Materials shall be deemed an individual
7 packaging component.

8 **SEC. 4. PROHIBITION ON ADDITION OF CERTAIN HEAVY**
9 **METALS IN PACKAGING.**

10 (a) IN GENERAL.—Except as provided in section 5,
11 effective 2 years after the date of enactment of this Act,
12 the intentional introduction of lead, cadmium, mercury, or
13 hexavalent chromium to packaging or any component
14 thereof during manufacturing or distribution by any per-
15 son is prohibited.

16 (b) CONCENTRATION LEVELS.—The sum of the con-
17 centration levels of lead, cadmium, mercury, and
18 hexavalent chromium present in packaging or any compo-
19 nent thereof may not exceed—

20 (1) 600 parts per million by weight (0.06 per-
21 cent) on or after the date that is 2 years after the
22 date of enactment of this Act and before the date
23 specified in paragraph (2);

24 (2) 250 parts per million by weight (0.025 per-
25 cent) on or after the date that is 3 years after the

1 date of enactment of this Act and before the date
2 specified in paragraph (3); and

3 (3) 100 parts per million by weight (0.01 per-
4 cent) on or after the date that is 4 years after the
5 date of enactment of this Act.

6 **SEC. 5. EXEMPTIONS.**

7 (a) IN GENERAL.—The requirements of section 4
8 shall not apply to packaging and any component thereof—

9 (1) with a code indicating a date of manufac-
10 ture of the packaging or component, or date of bot-
11 tling or manufacturing of distilled spirits and wines,
12 that is prior to the effective date of this Act; or

13 (2) if alternative evidence of a date of manufac-
14 ture or bottling prior to the effective date of this Act
15 is provided to the satisfaction of the Administrator.

16 (b) SAFETY CONSIDERATIONS.—

17 (1) IN GENERAL.—The requirements of section
18 4 shall not apply to packaging and any component
19 thereof to which lead, cadmium, mercury, or
20 hexavalent chromium has been added in the manu-
21 facturing, forming, printing, or distribution proc-
22 ess—

23 (A) in order to comply with health or safe-
24 ty requirements of Federal law; or

1 (B) because the addition of one or more of
2 the substances is essential for the protection,
3 safe handling, or functioning of the contents of
4 the packaging,
5 if the Administrator grants an exemption from the
6 requirements of this Act to the manufacturer of the
7 package or packaging component on the basis of
8 either criterion.

9 (2) PERIOD.—If the Administrator determines
10 that circumstances warrant an exemption from the
11 requirements of this Act, the Administrator may
12 grant an exemption for a period of 2 years.

13 (3) RENEWAL.—An exemption under paragraph
14 (2) may, on meeting either criterion under para-
15 graph (1), be renewed every 2 years.

16 (c) USE OF RECYCLED MATERIALS.—During the 6-
17 year period beginning on the date of enactment of this
18 Act, the requirements of section 4 shall not apply to pack-
19 aging and any component thereof that would not exceed
20 the concentration levels in section (b) but for the addition
21 of recycled materials.

22 **SEC. 6. CERTIFICATE OF COMPLIANCE.**

23 (a) IN GENERAL.—

24 (1) REQUIREMENT.—Not later than 2 years
25 after the date of enactment of this Act, the manu-

1 manufacturer or supplier of packaging or any component
2 thereof shall furnish to each purchaser a certificate
3 of compliance stating that the packaging or packag-
4 ing component is in compliance with the require-
5 ments of this Act.

6 (2) EXEMPTIONS.—If the manufacturer or sup-
7 plier claims an exemption under section 5, the man-
8 ufacturer or supplier shall state the specific basis on
9 which the exemption is claimed on the certificate of
10 compliance.

11 (3) SIGNATURE.—The certificate of compliance
12 shall be signed by an authorized official of the
13 manufacturing or supplying company.

14 (4) RETENTION OF CERTIFICATE BY PUR-
15 CHASER.—The purchaser shall retain the certificate
16 of compliance for as long as the packaging is in use.

17 (5) RETENTION OF COPY BY MANUFACTURER
18 OR SUPPLIER.—A copy of the certificate of compli-
19 ance shall be kept on file by the manufacturer or
20 supplier of the packaging or packaging component.

21 (6) COPIES TO ADMINISTRATOR AND PUBLIC.—
22 A copy of the certificate of compliance shall be fur-
23 nished to the Administrator on request, and to mem-
24 bers of the public in accordance with section 7.

1 (b) AMENDED OR NEW CERTIFICATE.—If the manu-
2 facturer or supplier of packaging or packaging compo-
3 nents reformulates or creates a new package or packaging
4 component, the manufacturer or supplier shall provide an
5 amended or new certificate of compliance for the reformu-
6 lated or new package or packaging component.

7 **SEC. 7. PUBLIC ACCESS.**

8 (a) REQUEST.—A request from a member of the pub-
9 lic for a copy of a certificate of compliance from the manu-
10 facturer or supplier of packaging or components thereof
11 shall be—

12 (1) in writing, with a copy provided to the
13 Administrator; and

14 (2) specific as to the package or packaging
15 component information requested.

16 (b) RESPONSE TO REQUEST.—A manufacturer shall
17 respond to a request that meets the requirements of sub-
18 section (a) not later than 60 days after receipt of the
19 request.

20 **SEC. 8. FEDERAL ENFORCEMENT.**

21 Whenever on the basis of any information the Admin-
22 istrator determines that any person has violated or is in
23 violation of this Act, the Administrator may issue an order
24 assessing a civil penalty in an amount not to exceed
25 \$25,000.

1 **SEC. 9. NONPRE-EMPTION.**

2 Nothing in this Act shall be construed so as to pro-
3 hibit a State from establishing and enforcing a standard
4 or requirement with respect to toxic metals in packaging
5 that is more stringent than a standard or requirement re-
6 lating to toxic metals in packaging established or promul-
7 gated under this Act.

8 **SEC. 10. REGULATIONS.**

9 Not later than 18 months after the date of enactment
10 of this Act, the Administrator shall promulgate regula-
11 tions to carry out this Act.

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